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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1939**

## No. 176

HAGGAR COMPANY, PETITIONER,

*vs.*

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

**PETITION FOR CERTIORARI FILED JULY 5, 1939.**

**CERTIORARI GRANTED OCTOBER 9, 1939.**

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1939

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## HAGGAR COMPANY, PETITIONER,

*vs.*

## GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 31, 1939.

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[fol. 1]

**BEFORE UNITED STATES BOARD OF TAX APPEALS**

**Docket No. 89265**

**Haggar Company, Petitioner,**

**versus**

**Commissioner of Internal Revenue, Respondent**

**Docket Entries**

Appearances:

For Petitioner: O. D. Brundidge, Esq.
For Respondent: Joe D. Hughes, Esq., W. G. Ruymann, Esq.

1937.

May 28. Petition received and filed. Taxpayer notified. (Fee paid.)
May 29. Copy of petition served on General Counsel.
June 3. Motion for circuit hearing in Dallas, Texas, filed by taxpayer.
July 28. Answer filed by General Counsel.
July 31. Copy of answer served on taxpayer.
Aug. 2. Motion for circuit hearing in Dallas, Texas, granted.
Dec. 8. Hearing set Feb. 21, 1938, Dallas, Texas.

1938.

Jan. 25. Notice to produce the entire file Docket No. 82698 at the trial on Feb. 21, 1938, at Dallas, Texas, filed by General Counsel.
Feb. 21. Hearing had before Mr. Tyson on merits. Submitted. Stipulation of facts filed. Petitioner's brief due 3/23/38—Respondent's brief due 4/23/38—reply due 5/9/38.
Mar. 11. Transcript of hearing 2/21/38 filed.
Mar. 21. Brief filed by taxpayer. 3/21/38 copy served on General Counsel.

DOCKET ENTRIES—Continued

[fol. 2]

1938.

Apr. 15. Brief filed by General Counsel.
July 21. Opinion promulgated—John A. Tyson, Division 1. Decision will be entered under Rule 50.
Aug. 9. Computation of deficiency filed by General Counsel.
Aug. 12. Hearing set Aug. 31, 1938, on settlement.
Aug. 31. Hearing had before Mr. Black on settlement under Rule 50—referred to Mr. Tyson for decision (respondent's computation).
Aug. 31. Decision entered—John A. Tyson, Division 1.
Nov. 8. Supersedeas bond in the amount of $3,600.00 approved and ordered filed.
Nov. 8. Petition for review by U. S. Circuit Court of Appeals, Fifth Circuit, with assignments of error filed by taxpayer.
Nov. 8. Proof of service filed by taxpayer.
Nov. 9. Præcipe for record filed with proof of service thereon.

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BEFORE UNITED STATES BOARD OF TAX APPEALS

PETITION—Filed May 28, 1937

The above named Taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue, set forth in his deficiency letter bearing date March 3rd, 1937 (SN-AE), and as the basis of its appeal sets forth the following:

1. The Taxpayer is a Texas corporation with its principal office and place of business in the City and County of Dallas, State of Texas.

[fol. 3] 2. The deficiency letter (copy of which is hereto attached, marked Exhibit "A" and made a part hereof) was mailed to the Taxpayer March 3rd, 1937, and states a deficiency of $382.49 of income tax, and a deficiency of $1376.52 of excess profits tax liability, a total of $1759.01.

3. The taxes in controversy are income and excess profits taxes for the calendar year 1933 in the total sum of $1759.01.

4. The determination of tax contained in the said deficiency letter is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in assessing an excess profits tax for the year 1933 against petitioner in the sum of $1376.52.

(b) The Commissioner of Internal Revenue erred in failing and refusing to accept the capital stock tax return filed September 28th, 1933, declaring the value of the capital stock of said corporation to be $250,000.00.

(c) The Commissioner of Internal Revenue erred in refusing to accept the check of the Petitioner in the sum of $250.00, tendered as payment of its capital stock tax to the Collector of Internal Revenue on September 28th, 1933.

(d) The Commissioner of Internal Revenue erred in failing and refusing to return to the Taxpayer its erroneous purported capital stock tax return filed August 23rd, 1933, and in failing and refusing to refund the payment of $120.00 erroneously tendered by Taxpayer at that time in payment of its capital stock tax.

[fol. 4] (e) The Commissioner of Internal Revenue erred in computing the excess profits tax of Taxpayer upon the declared value of its capital stock of $120,000.00 instead of $250,000.00 as set out in its capital stock tax return filed with the Collector of Internal Revenue on September 28th, 1933; said return having been filed within the time required by law for the filing of first return under Section 215(f) of the National Industrial Recovery Act, Approved June 16, 1933.

(f) The Commissioner of Internal Revenue erred in disallowing as a deduction in the computation of net income of the $250.00 capital stock tax paid to the Collector of Internal Revenue on the basis of its capital stock tax return on Form 707, filed with the Collector of Internal Revenue at Dallas, Texas, on September 28th, 1933.

(g) The Commissioner of Internal Revenue erred in allowing as a proper deduction in accordance with Office Decision (I. T.) 2827, Cumulative Bulletin XIII-2, the capital stock tax accrued as at July 1, 1933, on the basis of the capital stock tax return filed by petitioner on August 23rd,

1933, instead of computing the same upon the return filed September 28th, 1933.

5. The facts upon which the Taxpayer relies as the basis of its appeal are as follows:

(a) Taxpayer is a corporation, organized under the laws of the State of Texas, and was in existence prior to January 1st, 1933.

(b) Pursuant to Section 215(f) of the National Industrial Recovery Act and in accordance with Regulation 64, Art. 24, and within the time prescribed by the Commissioner in Regulation 64, Art. 55 (as amended by Treasury Decision 4386, dated August 24th, 1933), on to-wit the 28th day of [fol. 5] September, 1933, Taxpayer filed its First Capital Stock Tax Return declaring the value of its capital stock of $250,000.00, and tendered its check for $250.00, in payment of the tax of $1.00 per thousand, to the Collector of Internal Revenue for the Northern District of Texas at Dallas.

(c) Prior thereto, on or about August 23rd, 1933, an employee of Taxpayer erroneously filed a Capital Stock Tax Return stating the value of the stock at $120,000.00, and tendered Taxpayer's check for $120.00 in payment of the capital stock tax return. This return was filed before the promulgation of Treasury Decision 4386, dated August 24th, 1933, setting the time for filing such capital stock tax return to September 29th, 1933. This first purported return was prepared by an employee of Taxpayer before the officials of Taxpayer had learned the declared meaning of term "declared value," and before Taxpayer was aware that excess profits taxes would be computed upon such purported "declared value." The corrected return, filed September 28th, 1933, was made in good faith upon the advice of Petitioner's tax accountant.

(d) Under the National Industrial Recovery Act, Sec. 215(f), the original date for filing capital stock tax return was on or before July 31st, 1933. A blanket extension of time was allowed to August 31st, 1933, by Treasury Decision 4368 XII-1 C. B. 473, and a further extension to September 29th, 1933, was granted by Treasury Decision 4386, found in XII-2 C. B. 404. The corrected return for the period ending July 1st, 1933, was filed on September 28th, 1933, within

the time granted by the extension in Treasury Decision 4386.

(e) Regulation 64 under which the Commissioner claims that the first purported return submitted by Taxpayer cannot be amended, was not promulgated until August 15th, 1933.

[fol. 6] (f) The proposal to recommend the assessment of this deficiency tax was first made by Internal Revenue Agent in Charge at Dallas, Texas, in letter dated November 19th, 1935, to which Taxpayer filed its protest dated December 31st, 1935.

(g) The Commissioner of Internal Revenue erroneously assessed a deficiency excess profits tax of $1376.52, based on the purported capital stock tax return filed August 23rd, 1933, although Taxpayer within the time extended by law filed its Corrected First Capital Stock Tax Return under the National Industrial Recovery Act on August 28th, 1933, and paid a tax of $250.00 based on the declared value of its capital stock of $250,000.00.

(h) The Commissioner of Internal Revenue has retained, and still retains, the $250.00 tendered by Taxpayer as its capital stock tax in connection with its return filed September 28th, 1933, within the time prescribed by the Commissioner of Internal Revenue.

(i) In view of the fact that this was a new and unusual law and was not approved until June 16th, 1933, and that Taxpayer had had no opportunity to familiarize itself with the meaning and the peculiarities of said law, and since the Treasury Department recognized the right of all taxpayers to an extension of time within which to familiarize themselves with the terms and conditions of the new Act, the filing of Taxpayer's return on September 28th, 1933, was in contemplation of law and the regulations thereunder, its first return and the amount of $250,000.00 declared therein as the value of its capital stock was the proper amount upon which to base its capital stock tax, the computation of its income tax and the computation of its excess profits tax, if any. The Commissioner of Internal Revenue [fol. 7] should therefore determine Petitioner's income tax, its capital stock tax and its excess profits tax for the year 1933 under the provisions of said Section 215(f) of the

National Industrial Recovery Act and the applicable Regulations thereunder and the Treasury Decision above referred to, extending the time for the filing of capital stock tax return and payment of such tax until September 29th, 1933.

Wherefore, Taxpayer respectfully prays that the Board may hear and determine its appeal. Taxpayer further prays that:

(a) The Board may find that there is no deficiency excess profits tax due from Petitioner for the year 1933, and that its return filed September 28th, 1933, was in contemplation of law its "First Capital Stock Tax Return" under the National Industrial Recovery Act; that the Board may give and grant Petitioner such other and further relief as in the premises the Board may deem fit and proper, including refund of $120.00 capital stock tax erroneously paid by it on August 23rd, 1933; and,

(b) Petitioner prays, in the alternative, that in case the Board shall find that the capital stock tax return filed by it September 28th, 1933, was not its first return under the National Industrial Recovery Act, for the year 1933, it shall order and direct that a refund with interest be made to Petitioner for the said sum of $250.00 capital stock tax paid by it at the time of filing such return.

O. D. Brundidge, Counsel for Petitioner, Republic Bank Building, Dallas, Texas. Of Counsel: Burgess, Chrestman & Brundidge, Republic Bank Building, Dallas, Texas.

[fol. 8] *Duly sworn to by J. M. Haggar. Jurat omitted in printing.*

For Exhibit "A" referred to herein see Exhibit "A" attached to Stipulation of Facts.

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BEFORE UNITED STATES BOARD OF TAX APPEALS

ANSWER

Received July 28, 1937

Filed July 28, 1937

Comes now the Commissioner of Internal Revenue, by his attorney, Morrison Shafroth, Chief Counsel, Bureau of

Internal Revenue, and for answer to the petition filed in [fol. 9] the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in Paragraph 1 of the petition.

2. Admits the allegations contained in Paragraph 2 of the petition.

3. Admits the allegations contained in Paragraph 3 of the petition.

4. Denies the allegations of error contained in subparagraphs (a) to (g), inclusive, of Paragraph 4 of the petition.

5. Admits the allegations of fact contained in subparagraphs (a), (e) and (f); denies the allegations of fact contained in subparagraphs (b), (g) and (i) of Paragraph 5 of the petition. With reference to subparagraph (c), admits that on or about August 23, 1933, the taxpayer filed a capital stock tax return stating the value of the stock at $120,000.00, and tendered taxpayer's check for $120.00 in payment of such capital stock tax; and also admits that Treasury Decision 4386, dated August 24, 1933, extended the time for taxpayers to file capital stock tax returns to September 29, 1933. Denies the remaining allegations contained in subparagraph (c) of Paragraph 5 of the petition. With reference to subparagraph (d), admits that under the National Industrial Recovery Act, Section 215 (d), the original date for filing capital stock tax returns was on or before July 31, 1933, and that an extension of time was allowed to August 31, 1933, by Treasury Decision 4368, XII-1 C. B., 473, and a further extension to September 29, 1933, was granted to [fol. 10] taxpayers by Treasury Decision 4386, found in XII-2, C. B., 404; denies the remaining allegations contained in subparagraph (d) of Paragraph 5 of the petition. With reference to subparagraph (h), neither admits nor denies, inasmuch as the questions of whether taxpayer made an overpayment of its capital stock tax and whether it is entitled to a refund of capital stock tax are matters not within the jurisdiction of the Board of Tax Appeals.

Denies that petitioner is entitled to the relief prayed for in subparagraphs (a) and (b) which appear at the end of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that taxpayer's appeal be denied.

(Signed) Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue. Of Counsel: Frank M. Thompson, Jr., Loren P. Oakes, Special Attorneys, Bureau of Internal Revenue.

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[fol. 11] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 89265. Promulgated July 21, 1938

HAGGAR COMPANY, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Held, that the declaration of value of petitioner's capital stock as contained in its first capital stock tax return filed on August 22, 1933, pursuant to sections 215 (f) and 216 (a) of the National Industrial Recovery Act, may not be amended by a second capital stock tax return filed on September 28, 1933. William A. Webster Co., 37 B. T. A. 800, followed, despite a ruling to the contrary in Glenn v. Oertel Co., — Fed. (2d) — (C. C. A., 6th Cir., June 8, 1938).

O. D. Brundidge, Esq., for the petitioner.
Joe D. Hughes, Esq., for the respondent.

OPINION

TYSON:

For the calendar year 1933 the respondent determined a deficiency of $382.49 in income tax and a deficiency of $1,376.52 in excess profits tax against the petitioner herein.

This proceeding has been submitted upon a stipulation of facts which, together with the exhibits attached thereto, is adopted as our findings of fact and included herein by reference.

The petitioner concedes as correct the deficiency of $382.49 in income tax. The sole issue is whether the petitioner may

file a second or amended capital stock tax return for the year ending June 30, 1933, and thereby amend the declared value of its capital stock as reported in its first or original capital stock tax return for that year.

[fol. 12] The petitioner, a Texas corporation, was in existence and doing business during the year 1933, and prior thereto, with its principal office and place of business in Dallas, Texas.

Pursuant to section 215 (d) and (f) and section 216 (a) of the National Industrial Recovery Act, 48 Stat. 195. 208,[1]

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[1] See. 215 (d). Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed * * *. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

* * * * * * *

Sec. 215 (f). For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value can not be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid-in surplus and contributions to capital, and (3) earnings and profits, and minus (A) the value of property distributed in liquidation to shareholders, (B) distributions of earnings and profits, and (C) deficits, whether operating or nonoperating; each adjustment being made for the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year

the petitioner on August 22, 1933, filed a capital stock tax return for the year ended June 30, 1933, setting out an original declared value of $120,000 for its entire capital stock, which was the par value thereof. Simultaneously the petitioner paid to the collector of internal revenue the capi- [fol. 13] tal stock tax of $120 shown to be due on that return. In filing the return the petitioner assumed that the law contemplated the declaration of the par value of its capital stock as shown by its charter rather than its actual value and the petitioner failed to give consideration to paragraph 3 of the "Instructions" attached to form 707, upon which the return was made.

Within the time for filing capital stock tax returns for the year ended June 30, 1933, as extended by Treasury Decisions 4368 and 4386, the petitioner filed, on September 28, 1933, a second capital stock tax return for that year, in which it declared the value of its capital stock to be $250,000. On the same date it paid to the collector of internal revenue the capital stock tax of $250 shown to be due on that return. Such return was accepted by the collector on the assumption that it was for a corporation other than this petitioner, but upon disclosure that the two returns filed on August 22 and September 28, 1933, respectively, were for the same corporation, the petitioner was advised that the second return could not be accepted.

On or about August 9, 1937, the petitioner filed a claim for refund for the capital stock tax of $120 paid on August

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ending at or prior to the close of the year for which the tax is imposed by this section. • • •

• • • • • • • •

Sec. 216 (a). There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 215, an excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of 12½ per centum of the adjusted declared value of its capital stock • • • as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) determined as provided in section 215. The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

22, 1933, and the claim was rejected by the Commissioner on November 26, 1937.

On or about August 13, 1937, the petitioner filed a conditional claim for refund of the capital stock tax of $250 paid on September 28, 1933, and on or about December 24, 1937, the Commissioner tendered a Treasury check payable to petitioner in the amount of $312.58 as a refund of the capital stock tax of $250 plus interest. The petitioner has not cashed that check and the petitioner's tender of the check back to the Government has been refused.

[fol. 14] On March 15, 1934, the petitioner filed its "Corporation income tax and excess-profits tax return for the calendar year 1933", form 1120, on which it inadvertently computed its excess profits tax exemption at 12½ per cent of $370,000, the total declared value shown in the two above mentioned capital stock tax returns. The petitioner now claims that its excess profits tax exemption should have been computed at 12½ per cent of $250,000, the declared value of its capital stock as set out in its second capital stock tax return filed on September 28, 1933.

In determining the deficiency in excess profits tax, here in controversy, the respondent computed the exemption at 12½ per cent of $120,000, the declared value of petitioner's capital stock as shown in its original capital stock tax return filed on August 22, 1933.

The question here presented was considered at length and decided adversely to petitioner's contention in William A. Webster Co., 37 B. T. A. 800, and, with due respect for the United States Circuit Court of Appeals for the Sixth Circuit, we adhere to the rule there announced despite the contrary conclusion reached by that Court in Glenn v. Oertel Co., — Fed. (2d) — (June 8, 1938).

On brief and in one paragraph of four lines the petitioner presents the contention that the applicable provisions of the National Industrial Recovery Act are unconstitutional if the tax is to be levied on the value of its capital stock as declared by the taxpayer rather than on its actual value. This raises a moot question here, since the pleadings raise no issue as to the actual value of the stock and the proof does not show its actual value. Moreover, the petitioner has failed to cite any authority in support of this contention or to make any argument with reference thereto and it is not apparent to us that the question of the constitutionality of the statute is so doubtful as to justify a holding that it is

unconstitutional. Cf. Rita O'Shaughnessy, Executrix, 21 B. T. A. 1046; affd., 60 Fed. (2d) 235; certiorari denied, 288 [fol. 15] U. S. 605. See also Chicago Telephone Supply Co. v. United States, — Ct. Cls. —; — Fed. Supp. — (May 31, 1938), wherein the United States Court of Claims held a later identical statute to be constitutional.

Decision will be entered under Rule 50.

(Seal.)

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Before United States Board of Tax Appeals

Docket No. 89265

Haggar Company, Petitioner,

vs.

Commissioner of Internal Revenue, *Respondent*

Decision

Pursuant to the Board's Opinion promulgated July 21, 1938, in the above entitled proceeding, the respondent having duly filed a proposed recomputation in accordance therewith, and the petitioner having failed, after due notice, to file a counter proposed recomputation or to object, at the hearing on August 31, 1938, to the recomputation as made by the respondent, it is hereby

Ordered and Decided that, for the year 1933, there is a deficiency of $382.49 in income tax and $1,376.52 in excess-profits-tax.

Enter: Entered Aug. 31, 1938.

(Signed) John A. Tyson, Member. (Seal.)

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[fol. 16] Before United States Board of Tax Appeals

Petition of Haggar Company for Review by the Circuit Court of Appeals of the United States for the Fifth Circuit of a Decision by the United States Board of Tax Appeals—Filed Nov. 8, 1938

Taxpayer, the petitioner in this Cause, by O. D. Brundidge, counsel, hereby files its petition for a review by the Circuit

Court of Appeals of the United States, for the Fifth Circuit, at New Orleans, Louisiana, of the decision by the United States Board of Tax Appeals rendered on the 31st day of August, 1938, 38 B. T. A. 141, determining deficiencies in the petitioner's Federal income and excess profits taxes for the calendar year 1933, in the respective amounts of $382.49 income tax and $1,376.52 excess profits tax, and respectfully shows:

I

The petitioner, Haggar Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Texas, with its principal office in the City and County of Dallas, State of Texas.

Notice of filing this petition for review has been served upon Chief Counsel of the Bureau of Internal Revenue, Washington, D. C.

II

Nature of the Controversy

The controversy involves a proper determination of the petitioner's liability for Federal income taxes and excess profits taxes for the calendar year 1933.

[fol. 17] The petitioner is a corporation, incorporated and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business in Dallas, Dallas County, Texas. It was in existence and doing business during the year 1933 and prior thereto.

Pursuant to Sections 215 (d) and (f), and Section 216 (a) of the National Industrial Recovery Act, 48 Stat. 195, 208, the petitioner on August 22, 1933, filed, upon the form provided by the Collector of Internal Revenue, a capital stock tax return for the year ended June 30, 1933, in which was set out the par value of the capital stock of the corporation at its declared value of $120,000.00. Simultaneously with the filing of said instrument the petitioner paid to the Collector of Internal Revenue at Dallas, Texas, the sum of $120.00, being $1.00 per thousand of the par value of its stock. In filing the return the petitioner assumed that the law contemplated the declaration of the par value of its capital stock as shown by its charter rather than its actual value.

Within the time for filing capital stock tax returns for the year ended June 30, 1933, as extended by Treasury Decisions Nos. 4368 and 4386, its attention having been called

to the purpose and meaning of the Act, the petitioner filed on September 28, 1933, its first capital stock tax return for that year, in which it declared the value of its capital stock to be $250,000.00, based upon the actual value of the earning ability of the company's assets. On the same date the petitioner paid to the Collector of Internal Revenue at Dallas, Texas, capital stock tax of $250.00 shown to be due on that return, and such return was accepted by the Collector. On March 15, 1934, the petitioner filed its "Corporation Income and Excess Profits Tax Return" for the calendar year 1933, Form 1120, showing a net income of the petitioner for the taxable year of 1933 to be $39,748.59, and an income tax lia-
[fol. 18] bility of $5,465.43, which the taxpayer seasonably paid to the Collector of Internal Revenue for the Second District of Texas, at Dallas.

In its corporation, income and excess profits tax return for the calendar year 1933 your petitioner computed its excess profits tax exemption at the sum of $45,250.00, which was based upon 12½ per cent of $370,000.00, the total declared value shown in the two capital tax returns filed by it. The petitioner claims that its excess profits tax exemption should have been computed at 12½ per cent of $250,000.00, the declared value of its capital stock tax as set out in its capital stock tax return filed September 28, 1933, amounting to the sum of $31,250.00 leaving an excess profit of $8,428.79, upon which an excess profits tax of 5 per cent, amounting to $424.93 accrued, which the taxpayer conceded to be due and is willing to pay.

The deficiency of $382.49 of income tax liability for the tax year 1933 has not been contested by the petitioner and is not in issue here.

On or about August 9, 1937, petitioner filed in the office of the Collector of Internal Revenue at Dallas its application and claim for refund of the sum of $120.00 paid by it on August 22, 1937.

The petitioner's claim for refund of $120.00 capital stock tax paid was rejected by the Commissioner of Internal Revenue on November 26, 1937.

The deficiency letter assessing a deficiency of $1,376.52 of excess profits tax liability was mailed to the taxpayer on March 3, 1937.

III

The said Haggar Company, petitioner, being aggrieved by the findings of fact and conclusions of law contained in

[fol. 19] the said findings and opinion of the Board of Tax Appeals and by its decision entered pursuant thereto, desires to obtain a review thereof by the Circuit Court of Appeals of the United States for the Fifth Circuit, at New Orleans.

## IV

### Assignments of Error

The petitioner assigns as error the following acts and omissions of the Board of Tax Appeals:

(1) The failure to find that the petitioner's return filed September 28, 1933, was its first return under Clause (d), of Section 215 of the National Industrial Recovery Act.

(2) The failure to find that the Commissioner of Internal Revenue erred in failing and refusing to retain and confirm his acceptance of the capital tax stock return filed September 28, 1933, declaring that the value of the capital stock of said corporation to be $250,000.00.

(3) The failure to find that the Commissioner of Internal Revenue should have retained and continued to accept the check of the petitioner in the sum of $250.00 tendered as payment of his capital stock to the Collector of Internal Revenue on September 28, 1933.

(4) The failure to find that the Commissioner of Internal Revenue erred in failing and refusing to return to the taxpayer its erroneous purported capital stock tax return filed August 23, 1933, and in failing and refusing to refund to the petitioner the payment of $120.00 erroneously tendered at that time by the taxpayer.

(5) The failure to find that the Commissioner of Internal Revenue erred in computing the excess profits tax [fol. 20] of the petitioner upon the value of $120,000.00, instead of upon its declared value of $250,000.00 as set out in its first capital stock tax return filed September 28, 1933.

(6) The failure to allow the petitioner, as a deduction in the computation of its net income, of the $250.00 capital stock tax paid to the Collector of Internal Revenue on September 28, 1933.

(7) The failure to find that the Commissioner of Internal Revenue erred in determining the deficiency in

excess profits tax by computing the petitioner's exemption of 12½ per cent of $120,000.00 instead of computing said exemption at 12½ per cent of $250,000.00, as shown in its original capital stock tax return filed September 28, 1933.

(8) The finding of a deficiency of $1,376.52 in excess profits tax against the petitioner herein for the year 1933.

(9) In finding that the taxpayer's excess profits tax should be computed upon its errors rather than upon its income.

(10) In failing to compute the petitioner's excess profits tax in accordance with its first correct capital stock tax return filed September 28, 1933.

O. D. Brundidge, Counsel for Petitioner, 2003 Republic Bank Bldg., Dallas, Texas.

[fol. 21] *Duly sworn to by O. D. Brundidge. Jurat omitted in printing.*

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Before United States Board of Tax Appeals

STIPULATION OF FACTS—Filed February 21, 1938.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following facts may be taken as true, and that the same may be considered by the Board as offered in evidence by the parties to these proceedings; provided, however, that this stipulation shall be without prejudice to the right of either of the parties to these proceedings to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

1. The taxpayer is a Texas corporation, incorporated and existing under the name of Haggar Company, with its principal office and place of business in the City of Dallas, State of Texas. The taxpayer corporation was in existence [fol. 22] and doing business prior to January 1, 1933, and continued to do business during that year.

2. The notice of deficiency, copy of which is attached hereto and made a part hereof and marked Exhibit A, was mailed to the taxpayer within the statutory period on

March 3, 1937, and states a deficiency of $382.49 of income tax liability, and a deficiency of $1,376.52 of excess profits tax liability, a total of $1,759.01.

3. The petition in the present case was filed with the United States Board of Tax Appeals on May 28, 1937, within the time prescribed by law.

4. On August 22, 1933, the taxpayer, pursuant to Section 215 (d) and (f) of the National Industrial Recovery Act, approved June 16, 1933, filed with the Collector of Internal Revenue for the Second District of Texas at Dallas, Texas, a capital stock tax return for the year ending June 30, 1933, setting out an original declared value for its entire capital stock of $120,000, being the par value of $1,200 shares of its common stock issued and outstanding at that time at $100 per share. Simultaneous with the filing of said return, the taxpayer paid to the Collector of Internal Revenue at Dallas, Texas, the sum of $120 being the tax shown to be due thereon. A copy of such return is attached hereto and made a part hereof and marked Exhibit B. That said return was filed by the taxpayer upon the assumption that the law contemplated the declaration of the par value of the capital stock of the corporation as shown by its charter, and not its actual value; and taxpayer did not give consideration to Paragraph 3 of the "Instructions" attached to Form 707 upon which said return was made. A copy of such "Instruc-[fol. 23] tions" is hereto attached and marked Exhibit E for identification.

5. Under the terms of the National Industrial Recovery Act, Section 215 (d), the original date for filing capital stock tax returns thereunder was fixed on or before July 31, 1933. By T. D. 4368 (C. B. XII-1, page 473) and the third paragraph of Article 55 of Regulations 64, promulgated August 15, 1933, an extension to on or before August 31, 1934, was granted in the case of returns required to be filed in the continental United States, and a further extension to on or before September 29, 1933, was granted by T. D. 4386 (C. B. XII-2, page 404). The third paragraph of article 55 of regulations 64 was thereby amended to read as follows:

"The time for filing all returns for the year ended June 30, 1933, is extended to on or before September 29, 1933."

6. On September 28, 1933, the taxpayer, in good faith and upon the advice of its tax consultant, filed a second capital stock tax return for the year ending June 30, 1933, declaring the value of its capital stock at $250,000, and on the same date paid to the Collector of Internal Revenue for the Second District of Texas, Dallas, Texas, the sum of $250 as payment of the capital stock tax shown to be due thereon at the rate of $1 per one thousand of said declared value. Attached hereto and made a part hereof and marked Exhibit C is a true and correct photostatic copy of the capital stock tax return filed September 28, 1933. Said return was accepted by the Collector on the assumption that there were two corporations, one return being filed in the name of Haggar Company and the other in the name of The Haggar Company, Inc. However, when it was disclosed that the returns were for the same corporation, [fol. 24] the taxpayer was advised that the second return could not be accepted, and that it was at liberty to file claim for refund for the excess tax paid. Attached hereto and made a part hereof and marked Exhibit F is a copy of a letter of November 4, 1936, from Deputy Commissioner Bliss to the taxpayer.

7. On March 15, 1934, the petitioner filed its "Corporation income and excess profits tax return for the calendar year 1933," Form 1120, a true and correct photostatic copy of which is attached hereto, marked Exhibit D, four pages, and made a part hereof.

8. Said corporation income and excess profits tax return filed by the petitioner for the taxable year 1933 (Exhibit D) showed a net income of the petitioner for the taxable year 1933 of $39,748.59, and an income tax liability of $5,465.43, which the taxpayer seasonably paid to the Collector of Internal Revenue for the Second District of Texas at Dallas, Texas.

9. In its corporation income and excess profits tax return for the calendar year 1933 (Exhibit D), the petitioner computed its excess profits tax exemption at the sum of $45,250, which was based upon 12½% of $370,000, the total declared value shown in the two capital stock tax returns filed by it (Exhibit D, line 33). The petitioner now claims that its excess profits tax exemption should have been computed at 12½% of $250,000, the declared value of its capital

stock as set out in its second capital stock tax return filed September 28, 1933, amounting to the sum of $31,250, leaving an excess profit of $8,498.59 upon which an excess profits tax of 5% amounting to $424.93 accrued, which the taxpayer now concedes to be due and is willing to pay.

[fol. 25] 10. Petitioner further concedes as correct the determination of the respondent that a defieiency of $382.49 of income tax liability is due from it for the taxable year 1933 (Exhibit A, page 27).

11. On or about August 9, 1937, the petitioner filed in the office of W. A. Thomas, Collector of Internal Revenue for the Second District of Texas at Dallas, Texas, its application and claim for refund for the said sum of $120 paid by it on August 22, 1937.

12. Thereafter, on or about August 13, 1937, petitioner filed in the office of the Collector of Internal Revenue for the Second District of Texas at Dallas, Texas, a conditional application for refund of the $250 capital stock tax paid by it on September 28, 1933, setting out on the face of said claim as follows:

"This claim is filed for the purpose of preventing the bar of limitation in the event it shall be finally determined that the taxpayer is not entitled to a refund of $120 capital stock tax erroneously paid on August 23, 1933, the circumstances under which both payments were made are set out fully in additional sheets hereto attached and made a part of this claim."

13. Petitioner's claim for refund of $120 capital stock tax paid was rejected by the Commissioner of Internal Revenue on November 26, 1937.

14. On or about December 24, 1937, the Commissioner of Internal Revenue tendered to the petitioner check number 532309, drawn on the Treasury of the United States, payable to the Haggar Company in the sum of $312.58, as a refund of the $250 capital stock tax paid by it plus interest as allowed by law, which check has not been cashed by peti-
[fol. 26] tioner, and said check was by the taxpayer tendered back to the Government and was refused.

O. D. Brundidge, Attorney for Petitioner. J. P. Wenchel, R. E. T., Chief Counsel, Bureau of Internal Revenue.

EXHIBIT "A"

IT:E:3.
JCC-90D.

Mar. 3, 1937.

Haggar Company, Fourth Unit, Santa Fe Building, Dallas, Texas.

SIRS:

You are advised that the determination of your income tax liability for the taxable year(s) 1933 discloses a deficiency of $382.49, and that the determination of your excess profits tax liability for the year(s) mentioned discloses a deficiency of $1,376.52, as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiencies mentioned. Within ninety days, not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies above stated.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting [fol. 27] an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully, Guy T. Helvering, Commissioner, by W. T. Sherwood, Acting Deputy Commissioner.

Enclosures: Statement. Form 870.
JCC/DM-1.

Statement

IT:E:3.
JCC-90D.

In re: Haggar Company,

Fourth Unit, Santa Fe Building,

Dallas, Texas

Tax Liability for Taxable Year 1933

| | Liability | Assessed | Deficiency |
|---|---|---|---|
| Income tax | $5,847.92 | $5,465.43 | $382.49 |
| Excess-profits tax | 1,376.52 | None | 1,376.52 |

The deficiencies shown herein are based upon the report dated November 19, 1935, prepared by Revenue Agent Lawrence E. Cohn, a copy of which was transmitted to you, and upon such adjustments as are shown in the following schedule.

Careful consideration has been given to your protest dated December 31, 1935, in connection with the report of the internal revenue agent in charge, and the information submitted at a conference held in the office of that official.

[fol. 28] Net Income

| | | |
|---|---|---|
| Net income reported on return | | $39,748.59 |
| Add: | | |
| 1. Excessive deduction for bad debts | $1,793.39 | |
| 2. Excessive depreciation | 21.19 | |
| 3. Bad debts recovered | 942.11 | |
| 4. Capital stock tax disallowed | 250.00 | |
| | | 3,006.69 |
| Total | | $42,755.28 |
| Deduct: | | |
| 5. Interest on additional income tax, 1931 | $104.95 | |
| 6. Accrual of capital stock tax | 120.00 | |
| | | 224.95 |
| Net income as adjusted | | $42,530.33 |

Explanation of Changes

1. A reasonable addition to the reserve for bad debts has been computed in accordance with articles 191 and 195, Regulations 77.

The computation follows:

| Year | Opening Balance of Accounts Receivable | Bad Debts Charged Off |
|---|---|---|
| 1927 | $27,984.19 | $1,240.36 |
| 1928 | 30,716.98 | 761.79 |
| 1929 | 27,185.54 | 1,954.32 |
| 1930 | 38,607.02 | 9,454.27 |
| 1931 | 41,750.48 | 4,678.61 |
| 1932 | 66,930.22 | 11,312.58 |
| 1933 | 63,594.99 | 5,283.19 |
| Totals | $296,769.42 | $34,685.14 |

[fol. 29] Percentage of bad debts charged off to accounts receivable, as shown above ($34,685.14 ÷ $296,769.42) ..... 11.68%

Accounts receivable as at December 31, 1933 ... $88,581.81

Adjusted reserve for bad debts as at December 31, 1933 ($88,581.81 × 11.68%) ..... $10,346.36

Adjusted reserve as at January 1, 1933 ..... $8,018.69

Bad debts charged off during year ..... 6,225.30

Balance of opening reserve ..... $1,793.39

Addition to reserve for bad debts allowed ($10,346.36 — $1,793.39) ..... $8,552.97

Addition claimed on return ..... 10,346.36

Excessive addition to reserve disallowed ..... $1,793.39

2. Depreciation allowable on furniture and fixtures has been computed in accordance with Treasury Decision 4422, published on page 58, Cumulative Bulletin XIII-1. The corrected computation follows:

| | Year Acquired | Cost | Reserve 12/31/32 | Balance | Remaining Estimated Life |
|---|---|---|---|---|---|
| (1) | 1927 | $635.94 | $381.54 | $254.40 | 4 years |
| (2) | 1932 | 137.50 | 6.88 | 130.62 | 9½ years |
| (3) | 1933 | 437.50 | ..... | ..... | 10 years |
| | Totals | $1,210.94 | $388.42 | $385.02 | |

[fol. 30]

| | Depreciation Allowed for 1933 | Depreciation Reserve as at 12/31/33 |
|---|---|---|
| (1) Continued | $63.60 | $445.14 |
| (2) Continued | 13.75 | 20.63 |
| (3) Continued | 21.87 | 21.87 |
| Totals | $99.22 | $487.64 |
| Depreciation claimed | 120.41 | |
| Excessive depreciation | $21.19 | |

3. Bad debts previously charged off and recovered during the taxable year have been included in adjusted net income. This adjustment has been made under the provisions of article 191, Regulations 77.

4. Capital stock tax paid on the basis of the capital stock tax return form 707 filed with the collector of internal revenue for your district on September 28, 1933, has been disallowed as a deduction in the computation of net income. Information at hand indicates that the first capital stock tax return for the fiscal year ended June 30, 1933, was filed with the collector for your district in August 1933 and that the declared value of capital stock reported thereon is $120,000.00. The capital stock tax computed and paid on this valuation and allowed as a deduction on your income tax return is $120.00.

Section 215(f) of the National Industrial Recovery Act, approved June 16, 1933, provides that the adjusted declared value shall be the value, as declared by the corporation in its first return filed under this section, which declaration of value cannot be amended. The capital stock tax ($240.00) paid on the second capital tax return (filed September 26, 1933) has therefore been restored to income. This adjust-
[fol. 31] ment has been made under the provisions of Article 151, Regulations 77.

5. Interest on a deficiency in income tax assessed for 1931 but paid during the taxable year has been allowed as a deduction from gross income. This adjustment has been made under the provisions of Article 141, Regulations 77.

6. Capital stock tax accrued as at July 1, 1933, on the basis of the capital stock value declared in capital stock tax return filed in August, 1933, has been allowed as a proper deduction in accordance with Office Decision (I. T.) 2827 published on page 130, Cumulative Bulletin XIII-2.

Computation of Tax

Income Tax

| | |
|---|---|
| Net income as adjusted | $42,530.33 |
| Income tax at 13¾% | $5,847.92 |
| Income tax assessed, original, account #400982 | 5,465.43 |
| Deficiency | $382.49 |

Excess-Profits Tax

| | |
|---|---|
| Net income as adjusted | $42,530.33 |
| Less: 12½% of declared value of capital stock ($120,000.00) | 15,000.00 |
| Amount subject to excess-profits tax | $27,530.33 |
| Excess-profits tax at 5% | $1,376.52 |
| Excess-profits tax previously assessed, account #400982 | None |
| Deficiency | $1,376.52 |

[fol. 32] The records of this office indicate that no reply has been received to letter dated November 12, 1936, advising you of the approval of the report submitted by the Internal Revenue Agent in Charge at Dallas, Texas.

A copy of this letter has been mailed to your representative, Mr. J. C. Harris, 1713 Republic Bank Building, Dallas, Texas, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

JCC/DM-1.

(Here follow 6 photolithographs, side folios 33-38.)

EXHIBIT D

264-800

ORIGINAL

# 1933 RETURN
OF
## CAPITAL STOCK TAX
For Year Ending June 30, 1933

## DOMESTIC CORPORATIONS

(Sec. 215, National Industrial Recovery Act, 73d Congress, Public, No. 67)

This return must be filed with the Collector of Internal Revenue for your district on or before July 31, 1933, and the tax must be paid on or before that date.

INT. REV. DIST. TEX. AUG 22 1933

(Collector's district) Assessment List, Form 954

(Month) (Year)

41503

(Page) (Line)

Examined by

1. Name Haggar Company
(Exact name of corporation, joint-stock company, or association)

2. Address 7th Floor Fourth Unit Santa Fe Bldg., Dallas, Texas
(The address must be that of the principal place of business. Give "Street and number", "City or town", and "State".)

3. Name of parent company, if any None (District filed )

4. Name of subsidiary, if any None No. shares held (District filed )
(Give names and addresses of all subsidiaries in which the corporation owns stock; also number of shares held; also districts where filed)

5. Nature of business in detail Manufacturers Mens' and Boys' Trousers

6. Incorporated or organized in State of TEXAS Month MAY Year 1927

SEE INSTRUCTIONS ON REVERSE SIDE

7. Date or close of the last income-tax taxable year ending on or prior to the year ended June 30, 1933* January 1, 1933
*If no income-tax taxable year ending on or prior to year ended June 30, 1933, use date of organization.

8. Capital assigned as shown on balance sheet as of the date set forth in item 7 (no other date should be used):

| | Number of shares | Par value per share | Total |
|---|---|---|---|
| (a) Common stock 1500 Shares - 1200 Issued | 1200 | $100 | $120,000.00 |
| (b) Full preferred stock | | | |
| (c) Limited preferred stock | | | |
| (d) Surplus (or deficit) | | | |
| (e) Undivided profits | | | |
| (f) Total | | | |

COMPUTATION OF TAX

| | |
|---|---|
| 9. Original declared value for entire capital stock as of the date shown in item 7 | $ 120,000.00 |
| 10. Tax at rate of $1 for each full $1,000 in item 9 (omit cents) | $1.0.00 |
| 11. Penalty of 25 percent for delinquency in filing return | |
| 12. Interest | |
| 13. Total tax, penalty and interest | $1.0.00 |

DALLAS AUG 23 1933 COLLECTOR

U.S. 101

STATE OF TEXAS
COUNTY OF DALLAS

We, J. M. Haggar, President, and M. Haggar, Secretary and Treasurer, of the corporation for which this return for capital stock tax imposed by section 215 of the National Industrial Recovery Act is made, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report, including any statements attached to or accompanying this return, are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct.

Sworn to and subscribed before me this 19th day of August, 1933

R. H. Carr
Notary Public Dallas Co. Tex
(Official capacity)

J. M. Haggar
President.
M. Haggar
Secretary

[seal]

13-1

33

EXHIBIT "C"

264800

TREASURY DEPARTMENT
Internal Revenue Service

COL. IN.
2nd Dist. ...
St. 2nd

CLOSED

# 1933 RETURN OF CAPITAL STOCK TAX

For Year Ending June 30, 1933

DOMESTIC CORPORATIONS

(See U.S. National Industrial Recovery Act, 73d Congress, Public No. 67)

This return must be filed with the Collector of Internal Revenue for your district on or before July 31, 1933, and the tax must be paid on or before that date.

150 00

ORIGINAL

SEE NO.

Form 41295

Examined by

1. The Hagger Company, Inc.
(Print name of corporation, joint stock company, or association)

2. Address 4th Unit 7th Floor, Santa Fe Building, Dallas, Texas
(The address must be that of the principal office of business. Give street and number, city or town, and State.)

3. Name of parent company, if any (District filed )

4. Name of subsidiary, if any (If affiliated, give name and number of district where filed) No. shares held (District filed )

5. Nature of business in detail Manufacture of Men's trousers

6. Incorporated or organized in State of Texas Month May, 1927 amended Year 1932

SEE INSTRUCTIONS ON REVERSE SIDE

7. Date of close of the last income-tax taxable year ending on or prior to the year ended June 30, 1933 December 31, 1932
* If no income-tax taxable year ending on or prior to year ended June 30, 1933, use date of organization.

8. Capital amount as shown on balance sheet as of the date set forth in item 7 (no other date should be used)

| | Number of shares | Par value per share | Total |
|---|---|---|---|
| (a) Common stock | 1200 | $100.00 | $120,000.00 |
| (b) First preferred stock | | | |
| (c) Second preferred stock | | | |
| (d) Surplus (or deficit) | | | |
| (e) Undivided profits | | | |
| (f) Total | | | |

COMPUTATION OF TAX

9. Original declared value for entire capital stock as of the date shown in item 7 $ 250,000.00

10. Tax at rate of $1 for each full $1,000 in item 9 (omit cents) 250.00

11. Penalty of 25 percent for delinquency in filing return -

12. Interest -

13. Total tax, penalty and interest 250.00

STATE OF Texas
COUNTY OF Dallas } ss:

We, W. M. Hagger, President, and R. M. Hagger, Sec'y of the corporation for which this return for capital stock tax imposed by section 215 of the National Industrial Recovery Act is made, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report, including any statements attached to or accompanying this return, are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct.

Sworn to and subscribed before me this 21st day of June 1933

R. M. Carr
Notary Public Dallas Co. Tex.
(Official signature)

W. M. Hagger
President

R. M. Hagger
Sec'y

SEAL

2-1

EXHIBIT "D"

Corporation Proved

Form 1120
TREASURY DEPARTMENT
Internal Revenue Service

# CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN
## For Calendar Year 1933

Page 1 of Return

File No. 157

Serial No. 400982

This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1934

PRINCIPAL(LY) CORPORATION'S NAME AND BUSINESS ADDRESS

Mercer Company, Inc.

4th Nat'l. 7th Floor, Santa Fe Building

(Street and number)

Dallas, Texas

(Post office and State)

If So Extended, Except Where Otherwise Provided in the Instructions, That This Form Is Completely Filled In Irrespective of Any Statements, Schedules, or Reports Submitted Herewith

Date of Incorporation May 1927 ; Amended January 1, 32

Under the Laws of What State or Country Texas

The Corporation's Books are in Care of Office as above Located at Dallas Texas

Fiscal Year Ended December 31, 1933 ; Is This a Consolidated Return? No ; If Yes, How Many Corporations?

If a Foreign Corporation, State Whether Resident or Nonresident ; If Nonresident, State Amount of Income Included in Item 12, Page 2, Below

Note and explain fully.

## GROSS INCOME

| | | | |
|---|---|---|---|
| 1. Gross Sales (Where inventories are an income-determining factor), $ | Less Returns and Allowances, $ | Net Sales | $ 915,348.27 |
| 2. Less Cost of Goods Sold | | | |
| (a) Inventory at beginning of year | | $ 77,[illegible] | |
| (b) Material or merchandise bought for manufacture or sale | | [illegible] | |
| (c) Miscellaneous costs (From Schedule A, Column 1) (1) Salaries and wages, $ (2) Other costs, $ | | Total [illegible] | |
| (d) Total of Items (a), (b), and (c) | | $ 902,175.21 | |
| (e) Less, inventory at end of year | | [illegible] 30 | 822,754.98 |
| Gross Profit from Sales (Item 1 minus Item 2) | | | $ 92,284.36 |
| Gross Receipts (Where inventories are not an income-determining factor) $ | | | |
| Less cost of operations (From Schedule A, Column 2) (a) Salaries and wages, $ (b) Other costs, $ | | Total | |
| Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5) | | | |
| 6. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc. & Discounts [illegible] | | | 8,004.93 |
| 7. Rents | | | |
| 8. (a) Profit from Sale of Stocks and Bonds held 2 years or less. (From Schedule B, Total (a)) | | | |
| (b) Profit or Loss from Sale of all other Assets. (From Schedule B, Total (b)) | | | |
| 9. Dividends on Stock of (a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1932 | | | |
| (b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1932 | | | |
| (c) Foreign Corporations | | | |
| 10. Other Income (State nature of income) (Use separate schedule, if necessary) | Collection of accounts previously charged off | | 252.85 |
| 11. Total Income in Items 3, and 6 to 10, inclusive | | | $ 102,192.14 |

## DEDUCTIONS

Gross Receipts (where inventories are not an income-determining factor) ..... $

Less cost of operations (From Schedule A, Column B)
(a) Salaries and wages, $ ..... (b) Other costs, $ ..... Total .....

Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5) .....

Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc. & Discounts ..... 8 004 93

Rents .....

(a) Profit from Sale of Stocks and Bonds held 2 years or less. (From Schedule D, Total (c)) .....

(b) Profit or Loss from Sale of all other Assets. (From Schedule D, Total (b)) .....

Dividends on Stock of
(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1932 .....
(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1932 .....
(c) Foreign Corporations .....

Other Income (State nature of income) (Use separate schedule, if necessary) Collector of accounts previously charged off ..... 252 85

TOTAL INCOME IN ITEMS 3, AND 6 TO 12, INCLUSIVE ..... $ 102 192 44

## DEDUCTIONS

Compensation of Officers (From Schedule C) ..... $ 14 150 00

Rent on Business Property ..... 3 250 00

Repairs (From Schedule D) (a) Salaries and Wages, $ ..... (b) Other Costs, $ ..... Total .....

Interest ..... 6 694 14

Taxes (From Schedule E) .....

Losses by Fire, Storm, etc. (From Schedule F) .....

Bad Debts (From Schedule G) Bad Debts Schedule of computation attached ..... 10 346 71

Dividends (From Schedule H) .....

Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I) ..... 120 11

Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instruction 15) .....

Other Deductions Authorized by Law (Explain below, or on separate sheet)

(a) Salaries and wages. (Not included in Items 2, 4, 14, or 15 above) ..... 17 904 92

(b) Administrative Expenses - schedule attached ..... 11 577 87

24. TOTAL DEDUCTIONS IN ITEMS 14 TO 24 .....

25. NET INCOME (Item 13 minus Item 25) .....

## COMPUTATION OF TAX

INCOME TAX

EXCESS-PROFITS TAX

Net Income (Item 26, above) ..... $ 30 710 00

Credit for Dividends received (15% of Item 27) (or 10%, if Item 27, if less) ..... $ 5 146 53

Credit for Tax Paid at Source on Interest received which was included in gross income .....

Credit for Tax Paid at Source on Dividends received which was included in gross income .....

Balance of Income Tax (Item 30 minus Item 31) .....

Net Income for Excess-Profits Tax Computation (Item 26, above) ..... $ 30 710 00

Less: Credit of $ 370 000 00 (Amount of capital stock or other capital as specified in Section 740 of Revenue Act of 1932) .....

Balance of Income for Excess-Profits Tax (Item 34 minus Item 35) .....

Excess-Profits Tax (15% of Item 36) .....

An amended return must be marked "Amended" ..... Checks and drafts will be accepted only if payable at par.

a-b

35

## SCHEDULE K—BALANCE SHEETS (See Instruction 46)

| Items | Beginning of Taxable Year | | End of Taxable Year | |
|---|---|---|---|---|
| | Amount | Total | Amount | Total |
| **ASSETS** | | | | |
| 1. Cash | | 102 00 | | 100 00 |
| 2. Notes receivable | | 400 00 | | 400 00 |
| 3. Accounts receivable | 63 502 00 | | 1 2 917 23 | |
| Less reserve for bad debts | 2 00 00 | 60 502 00 | 12 000 00 | 170 350 30 |
| 4. Inventories: | | | | |
| Raw materials | | | | |
| Work in process | 37 193 75 | | 600 020 30 | |
| Finished goods | | | | |
| Supplies | | | | |
| | | 37 | | 81 020 30 |
| 5. Investments (nontaxable): | | | | |
| Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia | | | | |
| Securities issued under the Federal Farm Loan Act or under such Act as amended and obligations of United States possessions | | | | |
| Obligations of the United States | | | | |
| 6. Other investments: | | | | |
| Stocks of domestic corporations | | | | |
| Bonds of domestic corporations | | | | |
| Stocks and bonds of foreign corporations | | | | |
| All other investments or loans | | | | |
| 7. Deferred charges: | | | | |
| Prepaid insurance | | | | |
| Prepaid taxes | | | | |
| All other | | | | |
| 8. Capital assets: | | | | |
| Land | | | | |
| Buildings | | | | |
| Machinery and equipment | | | 1 27 00 | |
| Furniture and fixtures | | | | |
| Delivery equipment | | | | |
| Less reserves for depreciation (except on land) | | | | 22 11 |
| 9. Patents | | | | 50 00 |
| 10. Good will | | | | |
| 11. Other assets (describe fully): | | | | |
| | | 71 | | |
| 12. Total Assets | | | | 251 372 71 |
| **LIABILITIES** | | | | |
| 13. Notes payable (less than one year) | | | | 42 000 00 |
| 14. Accounts payable | | | | 1 213 65 |

| | | |

## SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Net income from Page 1, page 1 of the return | | | $ | 37 | 703 | 59 |
| 2. Nontaxable income | | | | | | |
| (a) Interest on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia | | | | | | |
| (b) Interest on securities issued under the Federal Farm Loan Act, or under such Act as amended | | | | | | |
| (c) Interest on obligations of the United States or its possessions | | | | | | |
| (d) Dividends deductible under Section 23 (p) of the Revenue Act of 1932 | | | | | | |
| (e) Proceeds of life insurance policies paid upon the death of the insured | | | | | | |
| (f) Other items of nontaxable income (to be detailed) | | | | | | |
| (1) [illegible] | | | | | | |
| (2) [illegible] | | | | | | |
| (3) [illegible] | | | | | | |
| 3. Charges against reserve for bad debts, if Item 10, page 1 of return, is not an addition to a reserve | | | | | | |
| 4. Charges against reserves for contingencies, etc. (to be detailed) | | | | | | |
| (a) | | | | | | |
| (b) | | | | | | |
| (c) | | | | | | |
| 5. Total of Lines 1 to 4, inclusive | | | $ | 40 | 243 | 57 |
| 6. Total from Line 16 | | | | 3 | 180 | 07 |
| 7. Net profit for year, as shown by books, before any adjustments [illegible] (Line 5 minus Line 6) | | | $ | 37 | 063 | 50 |
| 8. [illegible] and undivided profits as shown by balance sheet at close of preceding taxable year | | | | | 701 | 27 |
| 9. Other credits to surplus (to be detailed): | | | | | | |
| (a) [illegible] | | | | | | |
| (b) [illegible] | | | | | | |
| (c) [illegible] | | | | | 120 | 2 |
| 10. Total of Lines 7 to 9, inclusive | | | $ | 37 | 326 | 39 |
| 11. Total from Line 17 | | | | 24 | 702 | 96 |
| 12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11) | | | $ | 13 | 623 | 43 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 13. Unallowable deductions | | | | | | |
| (a) Donations, gratuities, and contributions | | | $ | | | |
| (b) Income and profits taxes paid to the United States, and such taxes paid to its possessions or foreign countries if claimed as a credit in Item 20, page 1 of the return | | | | | | |
| (c) Federal taxes paid on tax-free covenant bonds | | | | | | |
| (d) Special improvement taxes tending to increase the value of the property assessed | | | | | | |
| (e) Premiums and interest, additions, or betterments treated as expenses on the books | | | | | | |
| (f) Replacements and renewals | | | | | | |
| (g) Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary | | | | | | |
| (h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation | | | | | | |
| (i) Additions to reserve for bad debts which are not included in Item 10, page 1 of return | | | | | | |
| (j) Additions to reserves for contingencies, etc. (to be detailed) | | | | | | |
| (1) | | | | | | |
| (2) | | | | | | |
| (3) | | | | | | |
| (k) Other unallowable deductions (to be detailed) | | | | | | |
| (1) Federal income taxes | | | | 3 | 180 | 07 |
| (2) | | | | | | |
| (3) | | | | | | |
| 14. Total of Line 13 | | | $ | 3 | 180 | 07 |
| 15. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property) | | | | | | |
| (a) Date paid Dec. 31 | Character Cash | | $ | 21 | 000 | 00 |
| (b) Date paid | Character | | | | | |
| (c) Date paid | Character | | | | | |
| (d) Date paid | Character | | | | | |
| 16. Other debits to surplus (to be detailed) | | | | | | |
| (a) Adjustment of income for bad debts | | | | | 522 | 89 |
| (b) [illegible] | | | | | 519 | 69 |
| (c) Adjustment of depreciation | | | | | 183 | 57 |
| 17. Total of Lines 15 and 16 | | | $ | 24 | 702 | 96 |

### NET INCOME OR DEFICIT REPORTED IN RETURN FOR 1932 BEFORE DEDUCTING NET LOSS FOR PRIOR YEAR

1. Enter amount of net income or deficit for 1932 before deducting net loss for 1931 ..... $ .....

Enter amount deducted in return for 1932 as net loss $ ..... $ .....

### KIND OF BUSINESS

2. State the main business engaged in, also whether acting as principal or as agent on commission; state if inactive or in liquidation.

Principal - Sale of [illegible]

### AFFILIATIONS WITH OTHER CORPORATIONS

SEE INSTRUCTION 40

4. Is this a consolidated return? ..... No ..... If so, procure from the Collector of Internal Revenue (or your district Form 851, Affiliations Schedule, which shall be filed in, sworn to, and filed as a part of this return. See Section 141 of the Revenue Act of 1932 and Instruction 41.

5. Was the income of this corporation included in a consolidated return for the prior year? ..... No .....

If so, give name of corporation which filed the consolidated return. .....

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6. Total from Line 14 | | | 3 | [illegible] | 07 | | |
| 7. Net profit for year, as shown by books, before any adjustments made thereon (Line 5 minus Line 6) | | 27 | 083 | 60 | | | |
| 8. [illegible] and undivided profits as shown by balance sheet at close of preceding taxable year | | | 701 | 27 | | | |
| 9. Other credits to surplus (to be detailed): (a) [illegible] | | | | | | | |
| (b) [illegible] | | | | | | | |
| (c) | | | 130 | 79 | | | |
| 10. Total of Lines 7 to 9, inclusive | | 27 | 936 | 39 | | | |
| 11. Total from Line 17 | | 24 | 702 | 86 | | | |
| 12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11) | | 13 | [illegible] | 13 | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| (7) | | | | | | | |
| 14. Total for Line 13 | | | | | | 3 | 180 07 |
| 15. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property) (a) Date paid Dec. 31 Character Cash | | | | | | 2 | 000 00 |
| (b) Date paid Character | | | | | | | |
| (c) Date paid Character | | | | | | | |
| (d) Date paid Character | | | | | | | |
| 16. Other debits to surplus (to be detailed) (a) Adjustment of [illegible] for bad [illegible] | | | | | | | |
| (b) By collections [illegible] not [illegible] | | | | | | 698 | 69 |
| (c) Adjustment of [illegible] | | | | | | 183 | 57 |
| 17. Total of Lines 14 and 16 | | | | | | 24 | 702 86 |

**NET INCOME OR DEFICIT REPORTED IN RETURN FOR 1932 BEFORE DEDUCTING NET LOSS FOR PRIOR YEAR**

1. Enter amount of net income or deficit for 1932 before deducting net loss for 1931 ..... $ .....

Enter amount deducted in return for 1932 as net loss ..... $ .....

**KIND OF BUSINESS**

2. State the main business engaged in, also whether acting as principal or as agent or commission; state if inactive or in liquidation.

Principal - Sale of [illegible] Cards

Check the proper block below to indicate the general industrial division in which the corporation's main income-producing business falls:

- ☐ Agriculture and related industries, including fishing, forestry, ice harvesting, etc.; also leasing of such property.
- ☐ Mining and quarrying, including gas and oil wells; also leasing of such property.
- Manufacturing—
  - ☐ Food products and beverages.
  - ☐ Tobacco.
  - ☒ Textiles and textile products.
  - ☐ Leather and leather products.
  - ☐ Rubber and related products.
  - ☐ Lumber and wood products, including fiber furniture.
  - ☒ Paper, pulp and products.
  - ☐ Printing, publishing, and allied businesses.
  - ☐ Chemicals and allied products, including petroleum products.
  - ☐ Stone, clay, and glass products.
  - ☐ Metal and metal products, including precious metals and products.
  - ☐ Other manufacturing.
- ☐ Construction—excavations, buildings, bridges, railroads, ships, etc.; also equipping and installing operating systems, devices, or machinery without their manufacture.
- ☐ Transportation—rail, water, aerial, motor, etc.; also leasing of such facilities.
- ☐ Public utilities—electric light or power, gas (artificial or natural), pipe lines, telephone, telegraph or radio, waterworks, heating, toll bridges, etc.; also leasing of such utilities.
- ☐ Storage—cold storage, grain elevators, warehouses, safe deposit vaults, etc.; also leasing of such property.
- ☐ Trading—wholesale, retail, or commission.
- ☐ Service—professional, business, amusement, and domestic, including hotels, restaurants, laundries, etc.
- ☐ Finance—banks and other financial organizations, insurance, real estate; also brokers and agents.

**AFFILIATIONS WITH OTHER CORPORATIONS**
SEE INSTRUCTION 4B

4. Is this a consolidated return? ..... If so, procure from the Collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return. See Section 141 of the Revenue Act of 1932 and Instruction 41.

5. Was the income of this corporation included in a consolidated return for the prior year? No

If so, give name of corporation which filed the consolidated return. .....

**PREDECESSOR BUSINESS**

6. Did the corporation file a return under the same name for the preceding taxable year? Yes Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? No If answer is "yes," give name and address of each predecessor business, and the date of the change in entity .....

Upon such change were any asset values increased or decreased? .....
If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

**BASIS OF RETURN**

7. Is this return made on the basis of cash receipts and disbursements? Yes
If not, describe fully what other basis or method was used in computing net income .....

**VALUATION OF INVENTORIES**

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock .....

Cost or Market

**LIST OF ATTACHED SCHEDULES**

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Administrative Expense - Schedule 1
Computation of Bad Debts Reserve - Schedule 2

A-3

Page 4 of Return

## SCHEDULE A (See Instructions 2 and 5)

1. COST OF SALES (WHERE INVENTORIES ARE AN INCOME-DETERMINING FACTOR)

| Items | Amount (Enter on Item 3 (a)) |
|---|---|
| Salaries and wages [illegible] on Sales | $ [illegible] 21 |
| Other costs | [illegible] |
| [illegible] | [illegible] |
| [illegible] | [illegible] |
| [illegible] | [illegible] |

2. COST OF OPERATIONS (WHERE INVENTORIES ARE NOT AN INCOME-DETERMINING FACTOR)

| Items | Amount (Enter on Item 6) |
|---|---|
| Salaries and wages | |
| Other costs | |

## SCHEDULE B PROFIT FROM SALE OF STOCKS, BONDS, REAL ESTATE, ETC. (See Instruction 10)

| 1. Kind of Property | 2. Date Purchased | 3. Date Sold | 4. Amount Received | 5. Cost | 6. March 1, 1913 Value (If Any) Had Such Been Their Basis | 7. Cost of Improvements Made After March 1, 1913 | 8. Depreciation Allowed and Allowable (Other Than Amount Allowed Under Section 202 (b) of 1924 Act) From March 1, 1913 | 9. Net Profit or Loss |
|---|---|---|---|---|---|---|---|---|
| a) Stocks and bonds held 2 years or less | | | | | | | | |
| Total (Transfer net profit to Item 10 (a)) | | | | | | | | |
| b) All other assets (§ | | | | | | | | |

(a) Net transfer net profit or loss to Item

* As defined in Section 23 (r) 1932 Act. State how property was acquired

## SCHEDULE C COMPENSATION OF OFFICERS (See Instruction 14)

| 1. Name of Officer | 2. Official Title | 3. Time Devoted to Business | 4. Percentage of Stock Owned | 5. Amount of Compensation (Enter on Item 12) |
|---|---|---|---|---|
| J. M. Hagger | President | Full | 911 | $14,1[illegible] |

## SCHEDULE D. COST OF REPAIRS (See Instruction 16)

| Items | Amount (Enter on Item 16) |
|---|---|
| [illegible] | |
| [illegible] | |
| [illegible] | |
| [illegible] | |

## SCHEDULE E. TAXES PAID (See Instruction 18)

| Items | Amount (Enter on Item 20) |
|---|---|
| [illegible] | $ [illegible] 94 |
| [illegible] | 272 20 |
| [illegible] | 499 67 |
| [illegible] | 33 60 |
| [illegible] | 121 93 |

## SCHEDULE F EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 19)

| 1. Kind of Property | 2. Date Acquired | 3. Cost or Value March 1, 1913 (If Acquired Prior Thereto) | 4. Subsequent Improvements | 5. Depreciation Allowed or Allowable Since March 1, 1913 | 6. Insurance and Salvage Value | 7. Deductible Loss (Enter on Item 21) |
|---|---|---|---|---|---|---|
| | | | | | | $ [illegible] 14 |

Total ... transferred and ... to Item 10 ...

... transferred out ... Item 9 ...

... Section 23(r) 1932 Act ...
State how property was acquired ...

## SCHEDULE C COMPENSATION OF OFFICERS (See Instruction 14)

| 1 Name of Officer | 2 Official Title | 3 No. Devoted to Business | 4 Shares of Stock Owned: Common | 4 Shares of Stock Owned: Preferred | 5 Amount of Compensation (Enter on Item 9) |
|---|---|---|---|---|---|
| J. H. Bagger | President | Full | 911 | | $4,150.00 |

## SCHEDULE D COST OF REPAIRS (See Instruction 16)

| 1 Items | 2 Amount (Enter on Item 10) |
|---|---|

## SCHEDULE E TAXES PAID (See Instruction 18)

| 1 Items | 2 Amount (Enter on Item 12) |
|---|---|
| Pe ... | $ 1,400.94 |
| ... | 372.00 |
| ... | 499.67 |
| ... | 33.60 |
| ... | 93 |
| | $2,294.14 |

## SCHEDULE F EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 19)

| 1 Kind of Property | 2 Date Acquired | 3 Cost or Value as of March 1, 1913 (Whichever Applies) | 4 Subsequent Improvements | 5 Depreciation Allowable Since March 1, 1913 (If Any) | 6 Insurance and Salvage Value | 7 Deductible Loss (Enter on Item 19) |
|---|---|---|---|---|---|---|
| | | $ | | | | |

Date how property was acquired ...

## SCHEDULE G BAD DEBTS (See Instruction 20)

| 1 Year | 2 Bad Debts |
|---|---|
| 1929 | |
| 1930 | |
| 1931 | |
| 1932 | |
| 1933 | |

## SCHEDULE H DIVIDENDS DEDUCTIBLE (See Instruction 21)

| 1 Name of Corporation | Amount of Dividends: 2 Preferred | 3 Common |
|---|---|---|
| | | |

## SCHEDULE I EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 22)

| 1 Kind of Property | 2 Date Acquired | 3 Age When Acquired | 4 Remaining Life After Acquisition | 5 Cost | 6 March 1, 1913 Value if Acquired Prior to That Date | 7 Depreciation Allowed (or Allowable) in Prior Years | 8 Depreciation Allowable This Year |
|---|---|---|---|---|---|---|---|
| ... | | | | | | $ 57 | 120 |

## AFFIDAVIT

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by us and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the National Industrial Recovery Act and the Regulations issued thereunder.

Sworn to and subscribed before me this 22 day of March, 1934

IMPERIAL SEAL

R. N. Tarr Notary Public Bessie Carter

(Signature of officer administering oath) (Title)

CORPORATE SEAL

J. H. Bagger

Harry Nogal

(Signature of Treasurer) (Treasurer)

See Instruction 23. Attach a separate sheet if any of the above schedules do not provide sufficient space.

[fol. 39] PARAGRAPH #3 OF EXHIBIT "E"

3. Original declared value.—The corporation is required by the act to declare a value for its entire capital stock as of the date of the last income-tax taxable year ending on or prior to June 30, 1933, or as of the date of organization in the case of a corporation having no income-tax taxable year ending on or prior to June 30, 1933. Such original declared value is not subject to any amendment either by the Commissioner or by the corporation. However, if the net income for the income-tax taxable year immediately following the date shown in item 7, on the reverse side, is in excess of 12½ per cent of such declared value, an excess-profits tax of 5 per cent is imposed by section 216 of the act on the portion of the income that is in excess of 12½ per cent.

In arriving at the original declared value, the value of the corporation's business and property as an entirety and as a going concern should be considered, and in doing so, it should look to the net worth of the corporate assets, including its surplus and undivided profits as shown by the books, also to the franchise, good will, outstanding contracts, the earning capacity of the corporation, and the market value of its shares of stock. After having done so, the corporation should then determine the original declared value for its entire capital stock according to its best judgment.

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[fol. 40] EXHIBIT "F"

Copy.

Nov. 4, 1936.

MT:CST:CCG.
122849.

Haggar Company,
4th Unit Santa Fe Building,
Dallas, Texas.

GENTLEMEN:

Reference is made to your capital stock tax return filed August 22, 1933, for the taxable year ended June 30, 1933, on which you declared a value for your entire capital stock of $120,000.00 and paid tax in the amount of $120.00.

Reference is also made to another return filed September 28, 1933, by The Haggar Company, Inc., on which a valua-

tion of $250,000.00 was reported and tax paid in the amount of $250.00. This office accepted the second return on the assumption that there were two corporations. However, from information submitted by a revenue agent, it appears that there is only one corporation and that the correct name is Haggar Company. That fact is further borne out by the corporate seal on both returns showing the name "Haggar Company."

It is apparent, therefore, that the return filed September 28, 1933, was made in an attempt to amend the original declared value as reported on your return filed August 22, 1933, and you are advised that the amendment of the original declared value is specifically prohibited by section 215 of the National Industrial Recovery Act.

You are at liberty to file claim for refund with the collector of the excess tax paid.

Form 843 is inclosed for your convenience.

Respectfully,

(Signed) D. S. Bliss, Deputy Commissioner.

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[fol. 41] BEFORE UNITED STATES BOARD OF TAX APPEALS

PRAECIPE FOR RECORD—Filed Nov. 9, 1938

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare and certify, and transmit to the Clerk of the Circuit Court of Appeals of the United States for the Fifth Circuit at New Orleans, Louisiana, with reference to petition for review heretofore filed by the petitioner in the above cause, a transcript of the record of the above cause, prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to-wit:

(1) The docket entries of all proceedings before the Board of Tax Appeals.

(2) Pleadings before the Board of Tax Appeals, as follows:

(a) Petition for redetermination.

(b) Answer of the respondent.

(3) The opinion of the Board of Tax Appeals.

(4) The decision of the Board.

(5) The petition for review filed by the petitioner in the above cause.

[fol. 42] (6) The stipulation of facts executed by the Attorney for petitioner and Chief Counsel for the Bureau of Internal Revenue, with Exhibits A, B, C, D and F attached thereto. And Paragraph 3 only from Exhibit E.

(7) This praecipe.

O. D. Brundidge, Attorney for Petitioner, 2003 Republic Bank Bldg., Dallas, Texas.

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Personal service of the foregoing Praecipe for Record and the receipt of a copy thereof is hereby acknowledged this 9th day of November, A. D. 1938.

J. P. Wenchel, W., Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

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[fol. 43] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 44] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of April 19th, 1939

No. 9009

HAGGAR COMPANY,

versus

COMMISSIONER OF INTERNAL REVENUE

On this day this cause was called, and, after argument by O. D. Brundidge, Esq., for petitioner, and Miss Helen R. Carloss, Special Assistant to the Attorney General, for respondent, was submitted to the Court.

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[fol. 45] OPINION OF THE COURT—Filed May 23, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9009

HAGGAR COMPANY, Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petition for Review of Decision of United States Board of Tax Appeals (District of Texas)

(May 23, 1939)

Before Sibley, Hutcheson and Holmes, Circuit Judges

HOLMES, Circuit Judge:

This appeal is from a decision of the Board of Tax Appeals sustaining a deficiency assessment against petitioner for excess-profits taxes for the year 1933. The question presented is whether a capital-stock tax return, filed pursuant to section 215 (f) of the National Industrial Recovery Act, may be amended within the time fixed for filing returns.

[fol. 46] Section 215 (a) of the act imposes a tax of $1 for each $1,000 of the adjusted declared value of the capital stock of each domestic corporation doing business during the year ending June 30, 1933, to be paid by the corporation. Clause (d) provides that every such corporation shall make a return within one month after June 30th, and that the commissioner, with the approval of the Secretary, may set up rules and regulations prescribing the form and content of the return, as well as for an extension of time, not to exceed sixty days, for making the return. Clause (f) provides that, for the first year, the adjusted declared value shall be the value as declared by the corporation in its first return, and further provides that such declaration of value may not be amended. By section 216 (a), an excess-profits tax is imposed, the tax being equivalent to 5 per cent of such portion of the net income for the income-tax taxable year, as exceeds 12½ per cent of the adjusted declared value. 48 Stat. 195.

Treasury regulation 64 (1933 Ed.), article 42, adopted the foregoing provisions of the act, and admonished that the declared value would not only be used as the basis for payment of the capital-stock tax for the first taxable year, but that it would also be a primary factor in the computation of the tax for later years, as well as for the computation of excess-profits taxes. Instructions were attached to the form adopted for making the return, in which it was stated that the corporation was required to declare a value for its entire capital stock, which declared value would not be subject to change either by the commissioner or the corporation, but that, if the net income for the income-tax taxable year should be in excess of the 12½ per cent of such declared value, an excess-profits tax of 5 per cent of the excess was imposed by the act. The instructions further stated that, in [fol. 47] arriving at the original declared value, the value of the business and property as an entirety and as a going concern should be considered, as well as the net worth of the corporate assets, including surplus and undivided profits, franchise, good will, outstanding contracts, earning capacity, and the market value of the corporate shares. Following this recitation, it stated that the corporation should determine the original declared value according to its best judgment.

Petitioner filed its first return, declaring therein a value of $120,000 for its entire capital stock, and paid $120 as the tax due thereon. Thereafter, and within the extended time for filing its return, it filed another and different return

declaring the value at $250,000, and paid $250 as the tax due thereon. Due to a slight difference in the corporate name given on the two returns, and to the absence of any reference in the latter to the former, the collector accepted both on the assumption that they were made for different corporations. The first return declared the value of the stock at its par or face value; the second declared it at what petitioner contends was its actual or real value. A claim for a refund of the $120 tax payment was denied, but a refund of the $250 payment was tendered to petitioner, and rejected.

On March 15, 1934, petitioner filed its income and excess-profits tax return for the calendar year 1933, in which it inadvertently computed its excess-profits tax exemption at 12½ per cent of $3[illegible]0,000. The deficiency determined by respondent is computed on the basis of a declared value of $120,000. That contended for by petitioner is $250,000. Respondent contends that the original declared value is that set out in the first return. Petitioner contends that its second return was intended as an amendment of the first and, being filed within the time allowed, should be the one considered.

[fol. 48] The plan of taxation provided for in the act is a flat rate of taxation on the capital investment, and an additional tax on excess profits derived therefrom. Thus, if the taxable value of the capital investment be relatively high, the capital-stock tax is proportionately great. However, in such case, the probability of tax liability for profits is remote. If the taxable value placed upon the capital investment be relatively low, the capital-stock tax is correspondingly low, but the probability of the profits being taxable becomes large. The two taxes are made to work against each other, and the Government accepts the revenue from either source as being just. The declaration of a high value for the capital investment exposes the corporation to a tax liability when no profits are realized, while a low declaration of value produces a high potential liability if profits are realized. The basis of excess-profits taxes being an exemption of 12½ per cent of the declared value, the taxpayer is given a formula by which, to avoid both extremes and inequitable results, it may apply the information best known to it.

In the report of the Senate Finance Committee, Senator Harrison, Chairman, states that, in order "to avoid controversy as to the value of the capital stock, the tax is imposed upon the value declared by the corporation." In the same report it is stated that the primary object of the excess-

profits tax is to induce corporations to declare a fair value for their corporate stock. Senate Report No. 114, 73 Congress, 1st Session, page 6.

If the language of section 215 (f) is to be taken literally, there can be no doubt of the correctness of the interpretation placed thereon by respondent and the Board of Tax Appeals. That language is, "the adjusted declared value shall be the value, as declared by the corporation in its first return under this section." This language is immediately fol- [fol. 49] lowed by the parenthetical provision, "which declaration of value cannot be amended." This language is clear and free from any ambiguity or shades of meaning which would call for the application of any rules of construction other than that it shall be given its plain meaning. If Congress had intended to allow an amendment to the declaration of value within the time for filing returns, it could have done so, and would not have specified the declaration in the first return as the basis for the computation of the tax. United States v. Hartwell, 6 Wall. 385, 396, 18 L. Ed. 830; Lake County v. Rollins, 130 U. S. 662, 670, 9 Sup. Ct. 651, 32 L. Ed. 1060; Hamilton v. Rathbone, 175 U. S. 414, 419, 20 Sup. Ct. 155, 44 L. Ed. 219; Thompson v. United States, 246 U. S. 547, 551, 38 Sup. Ct. 349, 62 L. Ed. 876; United States v. Shreveport Grain and Elevator Co., 287 U. S. 77, 53 Sup. Ct. 42, 77 L. Ed. 175.

The administrative interpretation of this and subsequent provisions in later revenue acts, incorporated in the Treasury regulations, followed by subsequent enactments in which the same language is used, leaves no doubt as to legislative intent. The declared legislative purpose being to make the first return filed under the act the basis for the computation of the tax, and recognizing the possibility that amended returns might be attempted, the Congress expressly provided that the first declaration of value was not subject to amendment. The purpose to relieve the commissioner of any duty to determine the correct valuation, and requiring the corporation to fix its own value, would be defeated by any other view, since the filing of a succession of returns, with nothing more, would require a determination of [fol. 50] which was correct. Moreover, any question as to which return correctly declared the value would give rise to litigation of the very type that the Congress sought to prevent.

We are not unmindful of a contrary holding by the Sixth Circuit in the case of Glenn v. Ortel Co., 97 F. (2) 495. In

that case the opinion seems to take the view that the Congress was seeking to have the return declare the true or actual value of the capital assets of the corporation. Value is a relative term, and, when applied to the capital assets of a corporation defies application of any set rule or formula for its determination. Since the assets include good will, franchises, value as a going concern, as well as physical properties with fluctuating values, a method of determination for one corporation may be unjust for another; and the value, once determined, is subject to change between the time of its determination and the filing date of the return. Thus, true or actual value is made irrelevant, and the corporation is given the privilege of making its own rules and applying its own formulas, not for the determination of actual or real value, but for a basis upon which both taxes are to be computed, and with the privilege of selecting the basis most favorable to it. To make the plan work, it is necessary to confine the determination of tax liability to one return, and only one. The selection of the first, an intermediate, or the last return is a matter within the legislative discretion. In the act under consideration, the first return was selected.

The Board of Tax Appeals having held that the declara-
[fol. 51] tion contained in the first return was the true basis for the computation of the tax, and that the deficiency assessed by respondent was correct, its decision is

Affirmed.

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[fol. 52] JUDGMENT

Extract from the Minutes of May 23rd, 1939

No. 9009

HAGGAR COMPANY

versus

COMMISSIONER OF INTERNAL REVENUE

This cause came on to be heard on the petition of Haggar Company for a review of a decision of the United States Board of Tax Appeals, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decision of the said United States Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

[fols. 53-54] PETITION FOR REHEARING—Filed June 12, 1939

Petition for rehearing, covering 2 pages, filed June 12, 1939, omitted from this print. It was denied, and nothing more by order of June 17, 1939.

[fol. 55] ORDER DENYING REHEARING

Extract from the Minutes of June 17th, 1939

No. 9009

HAGGAR COMPANY

versus

COMMISSIONER OF INTERNAL REVENUE

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

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[fol. 56] MOTION AND ORDER STAYING MANDATE—Filed June 24, 1939

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS

No. 9009

HAGGAR COMPANY, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petition for Review of Decision of the United States Board of Tax Appeals (District of Texas)

Motion to Stay Issuance of Mandate

To the Honorable Circuit Court of Appeals:

Haggar Company, petitioner, appellant in the above entitled cause, shows to the court that it desires to petition the Supreme Court of the United States for a writ of certiorari to review the final judgment of this Honorable Court, and to that end desires a stay of the mandate from this court pursuant to the provisions of 28 USCA 350.

Movant shows that the judgment in this case bears interest at the rate of six per cent per annum, and that it has a supersedeas bond fully and amply protecting the

appellee, and that no harm could come to it by the staying of the mandate.

Wherefore, Haggar Company respectfully prays that the mandate of this court be stayed for a reasonable length of time to permit it to petition for and obtain a writ of certior-
[fol. 57] ari to the Supreme Court of the United States.

Dated June 21, 1939.

O. D. Brundidge, Attorney for Movant. Chrestman, Brundidge, Fountain, Elliott & Bateman, of Counsel, 2003 Republic Bank Building, Dallas Texas.

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[fol. 58] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 9009

HAGGAR COMPANY, Petitioner

versus

COMMISSIONER OF INTERNAL REVENUE, Respondent

On Consideration of the Application of the Petitioner in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Petitioner to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 24th day of June, 1939.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 59] CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

UNITED STATES OF AMERICA:

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 44 to 58 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9009, wherein Haggar Company is petitioner, and Commissioner of Internal Revenue is respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 43 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 26th day of June, A. D. 1939.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 60] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

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Endorsed on cover: File No. 43,583. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 176. Haggar Company, Petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed July 5, 1939. Term No. 176, O. T., 1939.

(4330)